

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

RICHARD NOWAK and LUCINDA L.	:	
WILLIAMS,	:	
Plaintiffs,	:	C.A. No.:
v.	:	
DAVID M. BORTLE JR. and AUDREY	:	JURY DEMANDED
ROSENBALM	:	
Defendants.	:	

COMPLAINT

PARTIES

1. The plaintiffs, Richard Nowak and Lucinda L. Williams are husband and wife who reside at 219 East 2nd Street, New Castle, Delaware, 19720.
2. The defendant, David M. Bortle Jr is currently a resident of and incarcerated at Chester County Prison whose address is 501 S. Wawaset Road, West Chester, PA 19382.
3. The defendant, Audrey Rosenbalm is an individual who resides at 116 Street Road, Cochranville, PA 19330.

JURISDICTION

4. Paragraphs 1 through 3 are incorporated herein by reference.
5. Jurisdiction is conferred pursuant to 28 U.S.C. §1332(a)(1) and § 1332(c)(1) as the amount in controversy exceeds \$75,000.00 and the action is between citizens of different states. Venue is proper in this Court pursuant to 28 U.S.C. §1391(a), as this is the judicial district in which the plaintiffs reside and the judicial district in which a substantial part of the events or omissions giving rise to this claim occurred.

FACTUAL ALLEGATIONS

6. Paragraphs 1 through 5 are incorporated herein by reference.

7. On May 28, 2007, at approximately 8:55 pm, the plaintiff, Richard Nowak, was operating his vehicle, southbound on Delaware Route 9, at the intersection of Delaware Route 9 and Riverview Drive in Wilmington, Delaware.

8. At the aforementioned time and place, the defendant, David M. Bortle, Jr., was operating a vehicle owned by the defendant, Audrey Rosenbalm, and was traveling southbound on Delaware Route 9, at the intersection of Delaware Route 9 and Riverview Drive in Wilmington, Delaware.

9. At the aforementioned time and place, the defendant, David M. Bortle, Jr., was driving under the influence of alcohol and collided with the rear of the vehicle the plaintiff was operating.

10. As a result of the aforesaid collision the plaintiff, Richard Nowak, suffered personal injuries.

11. The defendant, David M. Bortle, Jr., was issued citations for driving under the influence in violation of 21 Del. C. § 4177 and for careless and inattentive driving in violation of 21 Del. C. § 4176.

COUNT I
CLAIM AGAINST DAVID M. BORTLE JR

12. Paragraphs 1 through 11 are incorporated by reference.

13. The direct and proximate cause of the aforementioned collision was the negligence of the defendant, David M. Bortle Jr, as follows:

(a) He operated a vehicle while under the influence of alcohol in violation of 21 Del. C. § 4177;

(b) He operated a vehicle in a careless and imprudent manner, without due regard for the road, weather and traffic conditions then existing in violation of 21 Del. C. §4176(a);

(c) He failed to give full time and attention to the operation of a vehicle in

violation of 21 Del. C. §4176(b);

(d) He failed to maintain a proper lookout while operating a vehicle in violation of 21 Del. C. §4176(b);

(e) He drove a vehicle in willful and/or wanton disregard for the safety of persons and property, in violation of 21 Del. C. §4175(a);

(f) He failed to maintain and keep a proper lookout for persons and other vehicles in the area, in violation of the common law duty of care he owed to others on the roadway including the plaintiff, Richard Nowak;

(g) He operated a vehicle at a speed that was greater than was reasonable and prudent under the conditions, without due regard for actual or potential hazards then existing, in violation of 21 Del. C. §4168(a);

(h) He operated a vehicle that was not equipped with brakes adequate to control the movement of and stop of such vehicle, in violation of 21 Del. C. §4303(a);

(i) He failed to have the vehicle under proper and adequate control at the time of the accident, in violation of the common law duty of care he had to others on the roadway, including the plaintiff, Richard Nowak;

(j) He failed to operate a vehicle as a reasonable and prudent person under the circumstances in doing the aforesaid acts set out in subparagraphs (a) through (i) above, in violation of the common law duty of care he owed to others on the roadway including the plaintiff, Richard Nowak;

(h) He was otherwise negligent.

COUNT II
CLAIM AGAINST AUDREY ROSENBALM

14. Paragraphs 1 though 13 are incorporated herein by reference.

15. The defendant, Audrey Rosenbalm, was the owner and insurer of the vehicle operated by the defendant, David M. Bortle Jr, at the time of the aforesaid accident.

16. Upon information and belief, at all times relevant to this litigation, the defendant, David M. Bortle Jr, was the agent, servant and/or employee of the defendant, Audrey Rosenbalm. [DENIAL OF THIS ALLEGATION BY THE DEFENDANT MUST BE MADE BY AFFIDAVIT, PURSUANT TO 10 DEL. C. §3916.]

17. The defendant, Audrey Rosenbalm, is vicariously liable for the acts of her agent, servant and/or employee.

18. A proximate cause of the aforesaid collision was the negligence of the defendant, Audrey Rosenbalm, by entrusting her vehicle to the defendant, David M. Bortle Jr, whom she knew or should have known would act in a manner likely to cause injury to third persons.

19. The defendant, Audrey Rosenbalm, by entrusting her vehicle to a person whom she knew or should have known would act in a manner likely to cause injuries to third parties, acted in a manner which constituted willful and wanton disregard for the safety of others, including the plaintiff, Richard Nowak.

20. The negligence of the defendant, David M. Bortle Jr, is imputed to the defendant, Audrey Rosenbalm, by reason of her ownership of the vehicle operated by the defendant, David M. Bortle Jr, and she is therefore jointly and severally liable for the injuries sustained by the plaintiff, pursuant to 21 Del. C. §6105(a);

21. She was otherwise negligent.

COUNT III
CLAIM FOR PUNITIVE DAMAGES AGAINST DAVID M. BORTLE JR
AND AUDREY ROSENBAUM

22. Paragraphs 1 through 21 are incorporated herein by reference.

23. A proximate cause of the collision was defendant, Audrey Rosenbalm's negligent entrustment of her vehicle to defendant, David M. Bortle Jr.

24. A proximate cause of the collision was defendants' reckless indifference to the consequences and conscious disregard of the substantial risk of operating, or having knowledge

of the operation of, a motor vehicle for the while under the influence of alcohol, warranting punitive damages.

COUNT IV
CLAIM OF RICHARD NOWAK

25. Paragraphs 1 through 24 are incorporated herein by reference
26. As a direct and proximate result of the defendants' negligence, the plaintiff, Richard Nowak, suffered personal injuries, including but not limited to the following: diplopia (double vision), injuries to his left ankle and foot, injuries to his back, injuries to his neck, headaches, dizziness, disorientation, and stiffness.
27. As a consequence of his injuries, the plaintiff, Richard Nowak, has experienced, continues to experience and is likely to experience in the future, substantial physical pain, suffering and discomfort.
28. As a further consequence of his injuries, the plaintiff, Richard Nowak, has experienced, continues to experience and is likely to experience in the future, emotional pain, suffering, anxiety and nervousness.
29. As a further result of the defendants' negligence, the plaintiff, Richard Nowak, has incurred, and may in the future continue to incur, medical bills for the treatment of the injuries sustained in the accident.
30. As a consequence of his injuries, the plaintiff, Richard Nowak, has been required to undergo prolonged medical treatment.
31. As a result of the defendants' negligence, the plaintiff, Richard Nowak, has suffered and may in the future suffer an impairment of earning capacity.

COUNT V
CLAIM OF LUCINDA L. WILLIAMS

32. Paragraphs 1 through 31 are incorporated by reference.
33. As a direct and proximate cause of the defendants' negligence, and the resulting injuries sustained by the plaintiff, Richard Nowak, the plaintiff, Lucinda L. Williams, has in the

past been and will be in the future be deprived of earnings, comfort, society, companionship, services and consortium of her husband, Richard Nowak.

WHEREFORE, the plaintiffs, Richard Nowak and Lucinda L. Williams, pray that this Court enter judgment against the defendants, David M. Bortle Jr and Audrey Rosenbalm jointly and severally, for all compensatory, special and punitive damages and for the cost of this action, along with any other relief that this Court may deem proper.

DOROSHOW, PASQUALE
KRAWITZ & BHAYA

By: 

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DATED: 6/17/08

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS Richard Nowak and Lucinda L. Williams		DEFENDANTS David M. Bortle, Jr. and Audrey Rosenbalm																														
(b) County of Residence of First Listed Plaintiff <u>New Castle</u> (EXCEPT IN U.S. PLAINTIFF CASES)		County of Residence of First Listed Defendant <u>Chester</u> (IN U.S. PLAINTIFF CASES ONLY)																														
		NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.																														
(c) Attorney's (Firm Name, Address, and Telephone Number) See Attachment		Attorneys (If Known)																														
II. BASIS OF JURISDICTION (Place an "X" in One Box Only)		III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)																														
<input type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)	Citizen of This State <input checked="" type="checkbox"/> 1 <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State <input type="checkbox"/> 4 <input checked="" type="checkbox"/> 4																													
<input type="checkbox"/> 2 U.S. Government Defendant	<input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	Citizen of Another State <input type="checkbox"/> 2 <input checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State <input type="checkbox"/> 5 <input type="checkbox"/> 5																													
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<table border="1"> <thead> <tr> <th>REAL PROPERTY</th> <th>CIVIL RIGHTS</th> <th>PRISONER PETITIONS</th> </tr> </thead> <tbody> <tr> <td> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property </td> <td> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights </td> <td> <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition </td> </tr> </tbody> </table>		REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition																									
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V. ORIGIN (Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify) _____	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment
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Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. Section 1332

VI. CAUSE OF ACTION
Brief description of cause:
Motor Vehicle Accident

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER _____

DATE 6/19/08 SIGNATURE OF ATTORNEY OF RECORD [Signature]

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFFP _____ JUDGE _____ MAG. JUDGE _____

AO FORM 85 RECEIPT (REV. 9/04)

United States District Court for the District of Delaware

Civil Action No. _____

ACKNOWLEDGMENT
OF RECEIPT FOR AO FORM 85

NOTICE OF AVAILABILITY OF A
UNITED STATES MAGISTRATE JUDGE
TO EXERCISE JURISDICTION

I HEREBY ACKNOWLEDGE RECEIPT OF 2 COPIES OF AO FORM 85.

6/24/08
(Date forms issued)

X Anthony Campanella
(Signature of Party or their Representative)

X Anthony Campanella (Parcels)
(Printed name of Party or their Representative)

Note: Completed receipt will be filed in the Civil Action